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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,254	06/22/2001	Mikhail Markovich Gulyatiner	209870US0	5538

22850 7590 01/31/2003

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

LILLING, HERBERT J

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 01/31/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/886,254

Applicant(s)

GUSYATINER ET AL.

Examiner

HERBERT J LILLING

Art Unit

1651

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 December 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 23 December 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☒ The proposed amendment(s) will not be entered because:  
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

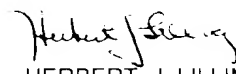
Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 7, 8, 10 and 11.

Claim(s) withdrawn from consideration: 9 and 12-22.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

  
HERBERT J LILLING  
Primary Examiner  
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ATTACHMENT OF ADVISORY ACTION DATED JANUARY 28, 2003

**The Final Rejection has been maintained as stated. It is noted based on the current record, the instant specification has been considered by this Examiner to be fatally defective for the elected claimed inventions [Claims 7, 8, 10 and 11].**

**The amendment to the claims will not be entered and considered in view of the fact that the amendment presents further consideration as well as does not materially reduce or simplify the issues. The additional information does not reduce the issues since the alleged improvement is not an absolute value but a comparison value that does not demonstrate that the value is a patentable distinction over the parent strain or any other mutated strain for the production of L-arginine in the presence of acetic acid or acetate as the only carbon source. The arguments have been deemed totally inadequate and factually incorrect with respect to the fact that the parent strain 237 noted in Table 2 does not produce arginine as well as that Table 3 is drawn to the presence of glucose and absolutely no acetic acid or acetate is present in the fermentation reaction. One of the basic**

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**issues which has not been addressed and supplied by Applicant is the requirement as noted by number (3) of page 5 of the remarks: "A description of the deposited biological material sufficient to specifically identify it and to permit examination;" which is commensurate in scope with the claimed inventions. The allegation that "Example 1 (page 8, line 4 to page 9, line 16), which fully describes characteristics of the deposited E. coli cell strains" has been considered to be totally inadequate for meeting the required material to specifically identify it and to permit examination. Applicant has failed to supply this information which sufficient factors includes A. > Morphological characteristics a. cells of the deposited strains as well as cells commensurate in scope with the claimed inventions incubated in various growth mediums and comparisons of the parent strains with the mutants with respect to (1) shape; (2) length/width; B. > Mode of proliferation; C.> Physiological characteristics (1) fermentation and (2) Assimilation comparisons of the parent strains versus the mutant strains.**

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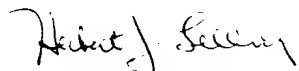
**Applicant has the opportunity to:**

- a. **Submit more persuasive arguments;**
- b. **Amendments;**
- c. **Appeal Brief, which is reviewed by in-house 1600 Technical Center that is persuasive to require this Examiner to withdraw the rejection. If not, Examiner's Answer will be submitted to the Board of Appeals that may be reversed by the Board of Appeals.**
- d. **Applicant would have the opportunity to submit either a RCE or a CIP to overcome the above rejections. It is very likely that only a CIP would be able to overcome the above rejections with respect to only deposited E. coli NTG strains 382 and 283 and mutants thereof.**

**Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lilling whose telephone number is (703) 308-2034 and Fax Number is for applications Before Final (703) 872-9306 and After Final for applications is 703-872-9307 or SPE Michael Wityshyn whose telephone number is (703) 308-4743. Examiner can be reached Monday-Thursday from about 5:30 A.M. to about 3:00 P.M. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.**

**(703) 308-2034**

**January 28, 2003**



**Dr. Herbert J. Lilling**

**Primary Examiner**

**Group 1600 Art Unit 1651**